

IC 21-5-11

Chapter 11. Authority and Procedure to Lease to a Public Holding Company

IC 21-5-11-1

Authority to lease; limitations; "school building"; joint leases

Sec. 1. (a) Any school corporation shall have the power to lease a school building or buildings for the use of such school corporation or of any joint or consolidated school district of which it is a part or to which it contributes. However, no such contract of lease shall be entered into for a period of more than thirty (30) years, nor unless there shall first be filed with the body or bodies vested with control of the school corporation a petition therefor signed by fifty (50) or more patrons of such school corporation, and the board of school trustees, township board, or the body or bodies vested with such control shall have, after investigation, determined that a need exists for such school building and that such school corporation cannot provide the necessary funds to pay the cost or its proportionate share of the cost of the school building or buildings required to meet the present needs.

(b) The term "school building", as used in this chapter, shall be construed to mean any building used as a part of or in connection with the operation of schools and shall include the site therefor, the equipment thereof, and appurtenances thereto such as heating facilities, water supply, sewage disposal, landscaping, walks, drives, and playgrounds, except that no building shall be constructed under this chapter which is designed for and to be used exclusively for inter-school athletic contests.

(c) If two (2) or more school corporations propose to enter into such a lease contract jointly, then joint meetings of the boards of school trustees, township boards, or other body or bodies having control may be held, but no action taken shall be binding on any such school corporation unless approved by a majority of the body representing such corporation. Any lease contract executed by two (2) or more school corporations as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be as agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each.

(Formerly: Acts 1947, c.273, s.1.) As amended by P.L.8-1987, SEC.69; P.L.25-1995, SEC.79.

IC 21-5-11-2

Lessor corporation; limitations on profits; use of lease rentals

Sec. 2. No school corporation or corporations shall enter into a contract of lease, under the provisions of this chapter, except with a corporation organized under the laws of the state of Indiana solely for the purpose of acquiring a site, erecting thereon a suitable school building or buildings, leasing the same to such school corporation or

corporations, collecting the rentals therefor and applying the proceeds thereof in the manner provided in this chapter. Such lessor corporation shall act, entirely without profit to the corporation, its officers, directors, and stockholders but shall be entitled to the return of capital actually invested, plus interest or dividends on outstanding securities or loans, not to exceed five percent (5%) per annum and the cost of maintaining its corporate existence and keeping its property free of encumbrance. Upon receipt of any amount of lease rental by such lessor corporation over and above the amount necessary to meet incidental corporate expenses and to pay dividends or interest on corporate securities or loans, such excess funds shall be applied to the redemption and cancellation of its outstanding securities or loans as soon as may be done.

(Formerly: Acts 1947, c.273, s.2; Acts 1957, c.57, s.1.) As amended by P.L.2-1988, SEC.695.

IC 21-5-11-3

Contracts of lease; provisions

Sec. 3. (a) All contracts of lease shall provide that such school corporation or corporations shall have an option to renew said lease for a further term, on like conditions, and to purchase the property covered by such contract of lease after six (6) years from the execution of the lease and prior to the expiration of the term of such contract or lease on such date or dates in each year as may be fixed therein, at a price equal to the amount required to enable the lessor corporation owning the same to liquidate by paying all indebtedness, with accrued and unpaid interest, and to redeem and retire any stock at par, and the expenses and charges of liquidation. In no event, however, shall such purchase price exceed the capital actually invested in such property by such lessor corporation represented by outstanding securities or existing indebtedness plus the cost of transferring the property and liquidating the lessor corporation. The phrase "capital actually invested" as used in this chapter shall be construed to include, but not by way of limitation, the following amounts expended by the lessor corporation:

- (1) Organization and incorporation expenses.
- (2) Financing costs.
- (3) Carrying charges.
- (4) Legal fees.
- (5) Architects' fees.
- (6) Contractors' fees.
- (7) Reasonable costs and expenses incidental thereto.

(b) No such contract of lease shall provide, nor be construed to provide, that any such school corporation shall be under any obligation to purchase such leased school building or buildings, or under any obligation in respect to any creditors, shareholders, or other security holders of the lessor corporation.

(Formerly: Acts 1947, c.273, s.3; Acts 1951, c.273, s.1.) As amended by P.L.2-1988, SEC.696.

IC 21-5-11-4

Plans and specifications to be submitted by lessor corporation; approval; application of IC 4-21.5

Sec. 4. (a) The lessor corporation proposing to build a school building or buildings, including the necessary equipment and appurtenances to the building or buildings, shall submit to the lessee or lessees, prior to the execution of a contract of lease, preliminary plans, specifications, and estimates for the building or buildings. Final plans and specifications shall be submitted to the state department of health, state fire marshal, and other agencies designated by law to pass on plans and specifications for school buildings. These final plans and specifications described in this subsection shall be approved by the approving agencies in writing and by the lessee or lessees prior to the construction of the school building or school buildings.

(b) IC 4-21.5 does not apply to the formulation, issuance, or administrative review (but does apply to the judicial review and civil enforcement) of an approval by an agency under subsection (a).

(Formerly: Acts 1947, c.273, s.4.) As amended by P.L.59-1988, SEC.7; P.L.2-1989, SEC.20; P.L.35-1990, SEC.39; P.L.2-1992, SEC.736; P.L.25-1995, SEC.80; P.L.152-1996, SEC.7.

IC 21-5-11-5

Lessee's responsibilities for taxes, assessments, insurance, and repair

Sec. 5. Such contract of lease may provide that as a part of the lease rental for such school building or buildings the lessee or lessees shall agree to pay all taxes and assessments levied against or on account of the leased property, to maintain insurance thereon for the benefit of the lessor corporation and to assume all responsibilities for repair and alterations thereon or thereto during the term of such lease.

(Formerly: Acts 1947, c.273, s.5; Acts 1951, c.273, s.2.)

IC 21-5-11-6

Contracts of lease before site acquisition or construction of building authorized; conditions

Sec. 6. Such school corporation or corporations may, in anticipation of the acquisition of a site and the construction and erection of such a school building or buildings, including the necessary equipment and appurtenances thereof, make and enter into a contract of lease with such lessor corporation prior to the actual acquisition of such site and the construction and erection of such building or buildings, but such contract of lease so entered into shall not provide for the payment of any lease rental by the lessee or lessees until the completion of such building or buildings ready for occupancy, at which time the stipulated lease rental may begin. The contractor shall be required to furnish to the lessor corporation a bond satisfactory to such corporation conditioned upon the final completion of such building or buildings within such a period as may

be provided in the contract.

(Formerly: Acts 1947, c.273, s.6; Acts 1949, c.177, s.1.)

IC 21-5-11-7

Notice and hearing; proposed lease; execution of lease; limitations of actions to contest validity of lease

Sec. 7. (a) When the lessor corporation and the school corporation or corporations have agreed upon the terms and conditions of any lease proposed to be entered into pursuant to the terms and conditions of this chapter and before the final execution of such lease a notice shall be given by publication to all persons interested of a hearing to be held before the board of school trustees, the township board, or the body or bodies vested with authority to approve the lease, or a joint meeting thereof, which hearing shall be on a day not earlier than ten (10) days if new construction is proposed or thirty (30) days if improvement or expansion is proposed after the publication of such notice. The notice of such hearing shall be published one (1) time in a newspaper of general circulation printed in the English language in the school corporation, or one (1) of the same if the proposed lease be a joint lease, or if no such paper be published therein, then in any newspaper of general circulation published in the county. Such notice shall name the day, place, and hour of such hearing and shall set forth a brief summary of the principal terms of the lease agreed upon, including the location, name of the proposed lessor corporation and character of the property to be leased, the rental to be paid, and the number of years the contract is to be in effect. The proposed lease, drawings, plans, specifications, and estimates for such school building or buildings shall be available for inspection by the public during said ten (10) day or thirty (30) day period and at said meeting.

(b) All persons interested shall have a right to be heard at the time fixed, upon the necessity for the execution of such lease and whether the rental provided for therein to be paid to the lessor corporation is a fair and reasonable rental for the proposed building. Such hearing may be adjourned to a later date or dates, and within thirty (30) days following the termination of such hearing the board of school trustees, township board, or governing body or bodies of such school corporation or corporations may by a majority vote of all its members either authorize the execution of such lease as originally agreed upon, or make such modifications therein as may be agreed upon with such lessor corporation, but in no event shall the lease rentals as set out in the published notice be increased. The cost of the publication of the notice shall be borne by the lessor corporation.

(c) In the event the execution of the lease as originally agreed upon, or as modified by agreement, is authorized by such board of school trustees, township board, or governing body or bodies of such school corporation or corporations, such board or governing body shall give notice of the signing of said contract by publication one (1) time in a newspaper of general circulation printed in the English language in the school corporation, or one (1) of the same if the

proposed lease be a joint lease, or if no such newspaper be published therein, then in any newspaper of general circulation published in the county. Fifty (50) or more taxpayers in such school corporation or corporations who will be affected by the proposed lease and who may be of the opinion that no necessity exists for the execution of such lease, or that the proposed rental provided for therein is not a fair and reasonable rental, may file a petition in the office of the county auditor of the county in which such school corporation or corporations is located, within thirty (30) days after publication of notice of the execution of such lease, setting forth their objections thereto and facts showing that the execution of the lease is unnecessary or unwise, or that the lease rental is not fair and reasonable, as the case may be. Upon the filing of any such petition, the county auditor shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved, to the department of local government finance, and upon the receipt of such certified petition and information, the department shall fix a time and place for the hearing of such matter which shall not be less than five (5) nor more than thirty (30) days thereafter, and said hearing shall be held in the school corporation or corporations, or in the county where such school corporations are located. Notice of the hearing shall be given by the department of local government finance to the members of the board of school trustees, township board, or governing body or bodies of such school corporation or corporations, and to the first fifty (50) taxpayer-petitioners upon such petition by a letter signed by the commissioner or deputy commissioner of the department, and enclosed with full prepaid postage addressed to such persons at their usual place of residence, at least five (5) days before the date of such hearing. The decision of the department of local government finance on such appeal, upon the necessity for the execution of said lease and as to whether the rental is fair and reasonable, shall be final.

(d) No action to contest the validity of the lease or to enjoin the performance of any of the terms and conditions of the lease shall be instituted at any time later than thirty (30) days after publication of notice of the execution of the lease by the board of school trustees, township board, or governing body or bodies of such corporation or corporations; or if an appeal has been taken to the department of local government finance, then within thirty (30) days after the decision of the department.

(Formerly: Acts 1947, c.273, s.7; Acts 1951, c.273, s.3; Acts 1967, c.114, s.1.) As amended by Acts 1981, P.L.208, SEC.6; P.L.8-1987, SEC.70; P.L.90-2002, SEC.452.

IC 21-5-11-8

Acquisition of land for building site; sale to lessor corporation

Sec. 8. The lessor corporation shall acquire, own and hold in fee simple the land on which such building or buildings is to be erected. Any school corporation proposing to lease such school building or buildings, either alone or jointly with another school corporation, and

owning the land on which it desires that such building or buildings be erected may and is hereby authorized to sell and transfer to the lessor corporation such land in fee simple. Before such sale may take place, the governing body of the school corporation shall file a petition with the circuit court of the county in which the school corporation is located, requesting the appointment of three (3) disinterested freeholders of the school corporation as appraisers to determine the fair market value of such land. Upon their appointment, the three (3) appraisers shall proceed to fix the fair market value of such land and shall report the amount so fixed to the circuit court within two (2) weeks from the date of their appointment. The school corporation may then sell such land to the lessor corporation for an amount not less than the amount so fixed as the fair market value by the three (3) appraisers, which amount shall be paid in cash upon delivery of the deed by the school corporation to the lessor corporation; Provided, however, That if such land was acquired by the school corporation within three (3) years immediately preceding the date of the filing of the petition with the circuit court, such land may not be sold for an amount less than the amount paid by the school corporation for such land.

(Formerly: Acts 1947, c.273, s.8; Acts 1951, c.273, s.4.)

IC 21-5-11-9

Lessor corporation's power to issue stock, bonds, and other securities; sale procedure

Sec. 9. (a) Any corporation qualifying as a lessor corporation under the provisions of this chapter shall have power, in furtherance of its corporate purposes, to issue stock, bonds, and other securities and to sell the same. Mortgage bonds issued by such a lessor corporation which are a first lien on such leased property shall be considered legal and proper investments for state banks and trust companies, insurance companies and fiduciaries. Such bonds may be callable at premiums up to five percent (5%) with accrued and unpaid interest thereon upon such notice as may be provided in the mortgage indenture.

(b) All stocks, bonds, and other securities issued by such lessor corporation shall be sold pursuant to IC 5-1-11, but the notice of sale shall be published in the manner required for bonds of the county in which the school building is located.

(c) Provisions with reference to public sale shall not apply to the issuance of shares of common stock. Such shares may be issued for such consideration as may be determined, but in no event shall the consideration for such shares be greater than the necessary expense of incorporation, preparation of preliminary plans and specifications, and other preliminary expense necessary to the preparation of the proposed lease and publication thereof. However, such consideration shall not exceed a sum equal to five percent (5%) of the proposed cost of such building or buildings.

(d) No part of the cost of construction of the building, the purchase of the equipment for the same, or the incidental expenses

in connection therewith, shall be paid from any stocks, bonds, or securities of the corporation except such as are sold at public sale as provided in this section.

(e) No approval of the Indiana securities commissioner shall be required in connection with the issuance and sale of any stocks, bonds, or other securities of the corporation.

(f) A portion of the proceeds from stocks, bonds, or other securities sold at public sale may be used to reimburse the incorporators, or any other person or persons who may have advanced funds for such essential preliminary expenses as provided for in this section, with interest thereon not to exceed five percent (5%).

(Formerly: Acts 1947, c.273, s.9; Acts 1949, c.177, s.2; Acts 1951, c.273, s.5.) As amended by P.L.23-1984, SEC.15; P.L.2-1988, SEC.697.

IC 21-5-11-10

Refunding bonds; issuance by lessor corporation

Sec. 10. Any lessor corporation having outstanding bonds that by their terms are then redeemable prior to the maturities thereof is hereby authorized and empowered to issue bonds in accordance with the provisions of section 9 of this chapter for the purpose of refunding such outstanding bonds. Such refunding bonds may be issued in an amount not exceeding the sum of principal amount of the outstanding bonds plus any premium required to be paid upon redemption thereof and the estimated expenses to be incurred in connection with the issuance of the refunding bonds. The sum of the net interest cost to the lessor corporation of the refunding bonds plus the premium required to be paid in connection with the redemption of the outstanding bonds and the estimated expenses to be incurred in connection with the issuance of the refunding bonds shall not exceed the total interest which would have been payable by the lessor corporation on the bonds being refunded from the date of redemption to the maturity thereof. Net interest cost on refunding bonds shall be the amount determined by computing the total interest on all of the refunding bonds to their maturities and deducting therefrom the premium bid, if any. Refunding bonds shall be considered legal and proper investments, shall be exempt from taxation, and may be sold without registration with or approval of the Indiana securities division or Indiana securities commissioner, all in the same manner, under the same conditions, and subject to the same limitations as any other bonds issued by lessor corporations pursuant to section 9 of this chapter. Provided, however, that no proceedings or actions by the lessee nor approval by any board, commission, or agency shall be required in connection with the refunding, and the refunding authorized in this section shall in no way affect the obligation of lessee to pay the lease rental under the lease of the building or buildings. No action to contest the validity of such bonds shall be brought after the fifteenth day following the receipt of bids for such bonds. In connection with the issuance of refunding bonds the lessee

school corporation or school corporations may enter into an amendment to the lease with lessor corporation providing for an extension of the time set forth in such lease before the option of the lessee or lessees to purchase may be exercised to such time as may be agreed upon between the lessee school corporation or school corporations and the lessor corporation. The term "bonds" as used in this section shall mean and include bonds, debentures, or other evidences of indebtedness.

(Formerly: Acts 1947, c.273, s.9a; Acts 1963(ss), c.23, s.1.) As amended by P.L.2-1988, SEC.698.

IC 21-5-11-11

Refunding and improvement bonds; issuance by lessor corporation; amendment of lease

Sec. 11. (a) Any lessor corporation having outstanding bonds that, by their terms, are then redeemable prior to the maturities thereof, is hereby authorized and empowered to issue bonds in accordance with the provisions of section 9 of this chapter for the purpose of refunding such outstanding bonds and construction improvements. Refunding and improvement bonds shall be considered legal and proper investments, shall be exempt from taxation, and may be sold without registration with or approval of the Indiana securities division or Indiana securities commissioner, all in the same manner, under the same conditions, and subject to the same limitations as any other bonds issued by lessor corporations pursuant to section 9 of this chapter.

(b) In connection with the issuance of refunding and improvement bonds, the lessee school corporation or school corporations may enter into an amendment to the lease with the lessor corporation providing for:

- (1) an extension of the time set forth in such lease before the option of the lessee or lessees to purchase may be exercised, to such time as may be agreed upon between the lessee school corporation or school corporations and the lessor corporation;
- (2) an extension of the term of the lease (such extension not to exceed ten (10) years) to include the improvements in the description of the leased property; and
- (3) increased lease rental after the completion of the improvements.

(c) The term "bonds" as used in this section shall mean and include bonds, debentures, or other evidences of indebtedness.

(d) The term "improvement" or "improvements" shall mean and include one (1) or more (singular or plural) or any combination of:

- (1) construction of a "school building" as defined in section 1 of this chapter;
- (2) an addition to a school building owned by such lessor corporation or owned by the school corporation to which it has leased property under this chapter and remodeling incidental thereto; or
- (3) remodeling of or construction of appurtenances to, a

building owned by such lessor corporation.

(e) No proceedings or actions by the lessee nor approval by any board, commission, or agency shall be required in connection with the refunding, and the refunding herein authorized shall in no way affect the obligation of lessee to pay the lease rental under the lease of the building or buildings. Provided, however, all provisions, restrictions, and limitations contained in this chapter which are not inconsistent with this section, including the petition of school patrons, notice of hearing, hearing, notice of execution, and right to file an objecting petition shall apply to an amendment of the lease increasing the lease rental as if such amendment were an original lease. No action to contest the validity of such bonds shall be brought after the fifteenth day following the receipt of bids for such bonds. *(Formerly: Acts 1947, c.273, s.9b; Acts 1965, c.423, s.1.) As amended by P.L.2-1988, SEC.699.*

IC 21-5-11-12

General obligation bonds; issuance by school corporation

Sec. 12. Any school corporation availing itself of the provisions of this chapter shall have the power and authority to issue its general obligation bonds for the purpose of procuring funds to pay the cost of acquisition in the event such school unit shall determine to exercise its option to purchase, which bonds shall be authorized, issued, and sold in the manner provided for the authorization, issuance, and sale of bonds by such school units for school building purposes.

(Formerly: Acts 1947, c.273, s.10; Acts 1951, c.273, s.6.) As amended by P.L.2-1988, SEC.700.

IC 21-5-11-13

Appropriations to pay lease rentals

Sec. 13. Any school corporation which shall execute a lease rental contract under the provisions of this chapter shall annually appropriate out of the debt service fund or general fund sufficient moneys to pay the lease rental stipulated to be paid by such school corporation in the lease contract. The appropriation shall be reviewable by other bodies vested by law with such authority to ascertain that the specified amount is sufficient to meet the rental of the lease contract. The first specific appropriation shall be made at the first budget period following the date of the execution of the aforesaid lease contract and the first annual appropriation shall be sufficient to pay the estimated amount of the first annual lease rental payment to be made under the lease. Thereafter, the annual appropriations provided for in this section shall be made, and payments shall be made from the debt service fund.

(Formerly: Acts 1947, c.273, s.11; Acts 1949, c.177, s.3; Acts 1967, c.335, s.1.) As amended by P.L.2-1988, SEC.701.

IC 21-5-11-14

Tax exemptions

Sec. 14. All property owned by a lessor corporation so contracting with such school corporation or corporations under the provisions of this chapter, and all stock and other securities including the interest or dividends thereon issued by a lessor corporation, shall be exempt from all state, county, and other taxes, except, however, the financial institutions tax (IC 6-5.5) and inheritance taxes (IC 6-4.1).

(Formerly: Acts 1947, c.273, s.12; Acts 1949, c.177, s.4.) As amended by P.L.2-1988, SEC.702; P.L.80-1989, SEC.15; P.L.21-1990, SEC.51; P.L.192-2002(ss), SEC.161 and SEC.165.

IC 21-5-11-15

Application of chapter

Sec. 15. This chapter is intended to be and shall be construed as being supplemental to all other laws covering the acquisition, use, and maintenance of school buildings by school corporations. Provided, that as to school buildings constructed, acquired, leased, or purchased pursuant to the provisions of this chapter, it shall not be necessary to comply with the provisions of other laws concerning the acquisition, use, and maintenance of school buildings by school corporations except as specifically required in this chapter. Provided, further, that the provisions of this chapter shall not apply to any school corporation, or joint or consolidated school corporation, the schools of which do not have a total enrollment of two hundred and fifty (250) or more pupils.

(Formerly: Acts 1947, c.273, s.13; Acts 1949, c.177, s.5.) As amended by P.L.2-1988, SEC.703.

IC 21-5-11-16 Repealed

(Repealed by P.L.1-1989, SEC.75.)

IC 21-5-11-17

Termination of lease; return of money by lessor corporation; deposits

Sec. 17. (a) Upon the termination of a lease entered into under this chapter, the lessor corporation shall return to the school corporation any money held by the lessor corporation in excess of the amount needed to retire bonds issued under this chapter and to dissolve the lessor corporation.

(b) A school corporation shall deposit the money received under subsection (a) into its debt service fund or capital projects fund.

As added by P.L.59-1988, SEC.8. Amended by P.L.41-1993, SEC.46.